UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,627	12/30/2003	Todd D. Danielson	5465A	7488

7590 01/26/2005

Milliken & Company
P. O. Box 1927
Spartanburg, SC 29304

EXAMINER	
METZMAIER, DANIEL S	
ART UNIT	PAPER NUMBER
1712	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/748,627	DANIELSON ET AL.	
	Examiner	Art Unit	
	Daniel S. Metzmaier	1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-14 are pending.

Terminal Disclaimer

1. The terminal disclaimer filed on November 05, 2004 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of Application number 10/140,700 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Specification

2. Applicants should update the status of the parent application in the cross-noting section of the specification as it changes.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over General Electric Company, WO 01/19921 (hereafter GE '921), optionally in view of Weaver et al US 4,845,188. GE '921 (page 7, line 1; page 8, line 1; examples and claims) disclose polyester films employing dyes including Macrolex Violet B (absorption peak maximum between 576 and 605 nm) or Macrolex violet 3R (absorption peak maximum between 555 and 575 nm).

It is further noted that these are the preferred components of the instant application, exemplified and commonly known as solvent dye 13 and solvent dye 36, respectively.

GE '921 differs from the claims in the use of a combination of colorants as instantly claimed rather than a single colorant exemplified in the GE '921 reference.

GE '921 (page 5, lines 20-24) discloses the Macrolex Violet B and Macrolex violet 3R dyes as dyes known in the art and clearly contemplates the disclosed dyes to be used either singly or in combination. GE '921 (page 12, lines 7-13) teaches the further addition of *uv* absorbers, i.e., *uv* screeners.

It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ the combination of dyes having adjacent absorption spectrums for the advantage of the particular color desired by the combination and for a broader range of absorption by the combination of materials absorbing at different wavelengths.

Furthermore, it is generally *prima facie* obvious to use in combination two or more ingredients that have previously been used separately for the same purpose in order to form a third composition useful for that same purpose. *In re Kerkhoven*, 626 F.2d 846, 205 USPQ 1069 (CCPA 1980); *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971); *In re Crockett*, 279 F.2d 274, 126 USPQ 186 (CCPA 1960). As stated in *Kerkhoven* and *Crockett*, the idea of combining them flows logically from their having been individually taught in the prior art.

GE '921 (page 4, lines 13-17) discloses the polymers may be prepared in interfacial systems, solutions, in melts or in the solid state. The properties would have been inherent to the use of the individual components for their taught functions. Said combinations would have been *prima facie* obvious for their taught functions.

To the extent GE '921 differs from the claims in the methods or the addition of benzotriazole as a uv absorbing agent, Weaver et al (column 1, lines 17 et seq; particularly lines 25-26 and 30-31) disclose the addition of benzotriazole as a uv absorbing agents to polymers employed in packaging containers including polyesters at concentrations of at least 0.5 %. Weaver et al (column 6, lines 1 et seq) further teaches the use of dyes at 0.01 % to 5.0 % based on the weight of the polymer or fiber.

These references are combinable because they teach weatherable polyesters compositions. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ the combination of dyes with benzotriazole in the concentrations of at least 0.5 % for the advantage of uv polymer stability.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,835,333. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following explanation. US 6,835,333 claims polyester fiber or article comprising at least two different first and second compounds that provide bluing effects within said fiber or article and optionally at least one ultraviolet absorbing compound; wherein said first compound exhibit at least one absorption peak and λ_{max} between 555 and 575 nm and said second compound exhibit at least one absorption peak and λ_{max} between 576 and 605 nm within the polyester fiber or article; and wherein said bluing agent is employed at 0.001 to 100 ppm. Thus, it is clear that there is significant overlap between the copending claim and the present claim since the claimed range of absorption peak overlap. Specifically, both claims are drawn to polyester fiber or article comprising bluing agent and optionally at least one UV

absorbing compound wherein the bluing agent exhibits single absorption peak between 565 and 590 nm.

The only "differences" between the present claim and the copending claim are:

The present claims are directed to a more generic polyester fiber or article while the copending claim recites polyester fiber or article employing two bluing agents with specified absorption peak ranges, wherein said first compound exhibit at least one absorption peak and λ_{max} between 555 and 575 nm and said second compound exhibit at least one absorption peak and λ_{max} between 576 and 605 nm within the polyester fiber or article. However, the generic disclosure of polyester fiber or article in the instant claim clearly encompasses all types of polyester fiber or article including clear polyester fiber or article that is colorless within the visible spectrum. Further, applicants' attention is drawn to MPEP 804 where it is disclosed that ("the specification can always be used as a dictionary to learn the meaning of a term in a patent claim." *In re Boylan*, 392 F.2d 1017, 157 USPQ 370 (CCPA 1968). Further, those portions of the specification, which provide support for the patent claims may also be examined and considered when addressing the issue of whether a claim in an application defines an obvious variation of an invention claimed in the patent. (Underlining added by examiner for emphasis) *In re Vogel*, 422 F.2d 438,164 USPQ 619,622 (CCPA 1970).

The US 6,835,333 claims are generic to the remaining instant claims, are therefore indistinct since they are based on the same invention, and could have been claimed in the earlier application.

Response to Arguments

8. Applicant's arguments filed November 5, 2004 have been fully considered but they are not persuasive.

9. Applicants (page 10) assert the GE reference does not teach the addition of two different blue light absorbing agents that act as bluing agents. Since the agents act as bluing agents and the resulting polymers are blue and/or violet, it is unclear that the materials absorb blue light rather than reflect it. The GE reference employs the same dyes as applicants as alternative dyes. The GE reference teaches said dyes may be used in combination. The wavelength range of 565 to 590 would have been a result inherent to the dyes taught in the GE reference.

Applicants further assert that the GE reference does not provide particular motivation to employ two violet dyes. The GE reference teaches multiple violet dyes and the use of combinations of violet dyes. Applicants independent claims do not define specific dyes but require two compounds and at least one absorption peak. Therefore, reds, yellows, and orange are not excluded from the claims.

Applicants (pages 10 and 11) assert the GE reference does not teach the concentration ranges as claimed, i.e., 0.001 to 100 ppm (0.0001 to 0.01 %). This has not been deemed persuasive since the endpoint of the range overlaps, i.e., 0.01% equals 100 ppm. Furthermore, applicants modify the claimed ranges by "about".

Lastly, applicants (page 11) assert the claimed compositions are clear but the instant claims have no such limitation.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM